

Kibler, Dottie

From: Abraham Rubert-Schewel <schewel@tinfulton.com>
Sent: Monday, April 25, 2022 12:26 PM
To: Kibler, Dottie; Littlejohn Law PLLC; Emily Gladden; Ian Mance; elizabeth@emancipatenc.org
Cc: Svendsgaard, Lisabeth
Subject: Re: Irving v. Raleigh, 22-CV-68 (NCED)

Follow Up Flag: Follow up
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Thanks Dottie,

Typically I would agree, but in this case without a commitment to revise the city's warrant execution policies and to provide at least some of the discovery we requested in our April 5 letter our clients are not interested in early mediation.

If the city's stance on this changes, we are always open to discussing settlement.

Best,

--

Abraham Rubert-Schewel

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Offices in Charlotte, Chapel Hill, Raleigh and Durham

From: Kibler, Dottie <dorothy.kibler@raleighnc.gov>
Date: Wednesday, April 20, 2022 at 4:23 PM
To: Abraham Rubert-Schewel <schewel@tinfulton.com>, Littlejohn Law PLLC <mll@littlejohn-law.com>, Emily Gladden <egladden@tinfulton.com>, Ian Mance <ian@emancipatenc.org>, elizabeth@emancipatenc.org <elizabeth@emancipatenc.org>
Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>
Subject: RE: Irving v. Raleigh, 22-CV-68 (NCED)

Abe: One of the benefits of mediation is that the parties have an opportunity to explore all issues of concern to them. Your clients will have a chance to speak directly to the members of the City's team about issues that concern them. The City's team has an opportunity to speak with your clients. Neither your clients nor mine are required to resolve a case in mediation if settlement terms aren't acceptable. As we did in the *Washington* case, we're willing to have those conversations at an early voluntary mediation. Dottie

Dorothy V. Kibler
Deputy City Attorney
City of Raleigh
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From: Abraham Rubert-Schewel <schewel@tinfulton.com>
Sent: Wednesday, April 20, 2022 3:59 PM
To: Kibler, Dottie <dorothy.kibler@raleighnc.gov>; Littlejohn Law PLLC <mll@littlejohn-law.com>; Emily Gladden <egladden@tinfulton.com>; Ian Mance <ian@emancipatenc.org>; elizabeth@emancipatenc.org
Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>
Subject: Re: Irving v. Raleigh, 22-CV-68 (NCED)

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Dottie,

I am sorry that our earlier phone call resulted in a misunderstanding. But both Mr. Littlejohn and I recall us making clear that any early mediation would require a discussion of the City's warrant execution policy and the possibility of revisions to that policy, not just an explanation of what happened here. We also informed you that we would need to consult our clients before agreeing to any mediation.

Thank you for the offer to provide the policy and have command staff present, but our clients are not willing to proceed with mediation at this point without the good faith possibility of the City reviewing and revising its warrant execution policies. We discussed this again with them after your most recent communication and our clients expressed to us that they want to ensure that the terror they experienced will not befall any other citizens of Raleigh.

If you have additional ideas or thoughts we are always happy to take them to our clients.

Respectfully,

--
Abraham Rubert-Schewel

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From: Kibler, Dottie <dorothy.kibler@raleighnc.gov>

Date: Wednesday, April 20, 2022 at 2:29 PM

To: Abraham Rubert-Schewel <schewel@tinfulton.com>, Littlejohn Law PLLC <mll@littlejohn-law.com>, Emily Gladden <egladden@tinfulton.com>, Ian Mance <ian@emancipatenc.org>, elizabeth@emancipatenc.org <elizabeth@emancipatenc.org>

Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>

Subject: RE: Irving v. Raleigh, 22-CV-68 (NCED)

Abe: I wanted to be sure you saw that we:

- Offered a CPO to allow you to review RPD Departmental Operating Instruction 1109-06, Planned Raids and Searches, an RPD policy that isn't public, and
- Indicated that a member of RPD's command staff will attend mediation and that our mediation team would expect to talk with Plaintiffs about how the search warrant was carried out.

The letter you sent wasn't consistent with our earlier discussions or with our offer. I wanted to be sure that in dismissing the City's early offer of mediation you were aware of the items that I've pointed out above. If the Plaintiffs change their mind and are willing to engage in an early mediation, we would welcome the opportunity to meet. Best regards, Dottie

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From: Abraham Rubert-Schewel <schewel@tinfulton.com>

Sent: Wednesday, April 20, 2022 2:44 PM

To: Kibler, Dottie <dorothy.kibler@raleighnc.gov>; Littlejohn Law PLLC <mll@littlejohn-law.com>; Emily Gladden <egladden@tinfulton.com>; Ian Mance <ian@emancipatenc.org>; elizabeth@emancipatenc.org

Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>

Subject: Re: Irving v. Raleigh, 22-CV-68 (NCED)

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Dottie,

See attached Plaintiffs' response your email. As always, we are happy to chat if you'd like.

Best,

--

Abraham Rubert-Schewel

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From: Kibler, Dottie <dorothy.kibler@raleighnc.gov>

Date: Tuesday, April 19, 2022 at 9:36 AM

To: Abraham Rubert-Schewel <schewel@tinfulton.com>, Littlejohn Law PLLC <mll@littlejohn-law.com>, Emily Gladden <egladden@tinfulton.com>, Ian Mance <ian@emancipatenc.org>, elizabeth@emancipatenc.org <elizabeth@emancipatenc.org>

Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>

Subject: RE: Irving v. Raleigh, 22-CV-68 (NCED)

Abe: After our phone call, I conferred with my client about the two issues you raised when we spoke. A member of the RPD command staff will be a part of the City's mediation team for our early mediation and I understand that your clients will want to discuss how the search warrant was carried out on May 21, 2020. We will be prepared to do that.

As I am sure you know from your prior work in the *Washington* case, the bulk of RPD's policies are available to the public through the City's website. You indicated that you believed there were RPD policies that are not public but that are relevant to how RPD carries out the service of a search warrant. You are correct that RPD Departmental Operating Instruction 1109-06, Planned Raids and Searches, is not public. My client will agree to release for attorneys' eyes only, pursuant to a consent protective order, the version of this DOI in place on May 21, 2020 and any version put into effect thereafter up to the date of our early mediation.

Materials related to the search warrant, including bodyworn camera footage capturing the encounter, have already been released to you under multiple orders entered by the Superior Court. While we are certainly willing to talk with you and the mediator about the encounter and other issues relevant to the Plaintiffs' concerns, we are seeking an early mediation to explore the possibility of an early resolution—thus focusing on your clients' damages. While issues outside of damages will unquestionably be the subject of debate if the case is not resolved at our early mediation, at this point, the parties benefit from exploring settlement opportunities rather than commencing what is essentially extensive discovery to the City.

It appears that Mr. Bell's calendar is now booked for June. I propose that we schedule the mediation for one of the open days in July (5, 8, 11-12, 28) that are acceptable to counsel for the parties, I will

prepare a CPO allowing release for attorneys' eyes only of DOI 1109-06, we will seek a joint stay and I will draft that stay using the *Washington* case as a model but ensuring that ruling on the CPO is not subject to the stay. If you will confirm today that this is acceptable to the Plaintiffs, I will have the draft CPO and stay to you by the close of business tomorrow.

We are getting close to the responsive pleadings deadline for the defendants and I would like to have the motions for the CPO and stay filed by Friday. Please let me know if this is agreeable to you and if you will agree to extend the defendants' deadlines for responsive pleadings until the Court's ruling on the stay if that is necessary. I look forward to seeing everyone at our mediation and, of course, am willing to host the mediation here at the City's offices. Best regards, Dottie

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From: Abraham Rubert-Schewel <schewel@tinfulton.com>
Sent: Tuesday, April 5, 2022 10:11 AM
To: Kibler, Dottie <dorothy.kibler@raleighnc.gov>; Littlejohn Law PLLC <ml@littlejohn-law.com>; Emily Gladden <egladden@tinfulton.com>; Ian Mance <ian@emancipatenc.org>; elizabeth@emancipatenc.org
Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>
Subject: Re: Irving v. Raleigh, 22-CV-68 (NCED)

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Dottie,

See attached Plaintiffs' letter in response to the City's proposal of early mediation. We look forward to discussing this with you further and are available to chat at your convenience.

Best,

--

Abraham Rubert-Schewel

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From: Kibler, Dottie <dorothy.kibler@raleighnc.gov>
Date: Friday, March 4, 2022 at 9:46 AM
To: Abraham Rubert-Schewel <schewel@tinfulton.com>, Littlejohn Law PLLC <ml@littlejohn-law.com>, Emily Gladden <egladden@tinfulton.com>, Ian Mance <ian@emancipatenc.org>
Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>
Subject: RE: Irving v. Raleigh, 22-CV-68 (NCED)

Thanks, Abe. That works for me and I look forward to speaking with you. Dottie

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From: Abraham Rubert-Schewel <schewel@tinfulton.com>
Sent: Wednesday, March 2, 2022 5:57 PM
To: Kibler, Dottie <dorothy.kibler@raleighnc.gov>; Littlejohn Law PLLC <ml@littlejohn-law.com>; Emily Gladden <egladden@tinfulton.com>; Ian Mance <ian@emancipatenc.org>
Cc: Svendsgaard, Lisabeth <Lisabeth.Svendsgaard@raleighnc.gov>
Subject: Re: Irving v. Raleigh, 22-CV-68 (NCED)

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Dottie,

We are available and happy to chat next Wednesday at 11 am. Please confirm that time works.

Here is dial in information:

1-888-585-3008

When prompted put in room number 230343310#

Best,

--

Abraham Rubert-Schewel

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TIN FULTON WALKER & OWEN

Dottie Kibbler
Raleigh Deputy City Attorney
dorothy.kibler@raleighnc.gov
SERVED VIA EMAIL

April 5, 2022

Re: *Irving, et al v. City of Raleigh, et al*, 22-CV-0068, Potential Mediation and Request for Documents

Dottie,

Thank you for taking the time to contact us to propose pre-answer mediation. Plaintiffs are certainly interested in the possibility of an early resolution. However, in addition to monetary compensation, Plaintiffs are eager to see a change in the Raleigh Police Department's ("RPD") policies related to execution of search warrants. As laid out in our complaint, Plaintiffs believe that the RPD routinely violates the constitutional rights of citizens of Raleigh by knocking and immediately entering residences without reasonable suspicion or exigent circumstances that would justify immediate entry.¹

In an effort to resolve this matter through early mediation, Plaintiffs request that the City provide the following documents and policies to counsel 60 days prior to a scheduled mediation. These are all documents or policies that would be discoverable if this case proceeded. By agreeing to early mediation Plaintiffs are giving up their right to discovery and request the City provide these documents to allow for a more transparent review of RPD's search warrant policies.

Policies and Procedures

- All current RPD policies or procedures related to application for and execution of search warrants.
 - All RPD training materials related to application for and execution of search warrants.
- All Selective Enforcement Unit policies and procedures.
- All VICE Unit policies and procedures.
- All RPD policies and procedures related to Payment of Confidential Informants and Use of Informant Funds.
- The Internal Affairs File (or any internal RPD investigatory file) related to this incident, Officer Omar Abdullah and Dennis Williams.

¹ The U.S. Supreme Court has adopted a "reasonableness" inquiry, deciding that although the standard generally requires the police to "announce their intent to search before entering closed premises, the obligation gives way when officers have a reasonable suspicion" that it would be "dangerous or futile" to knock and announce. *United States v. Banks*, 540 U.S. 31, 36 (2003). In *Banks*, the Court held that it was reasonable to enter a home "15 to 20 seconds" after knocking and announcing when officers suspected "imminent loss of evidence." *Id.* Plaintiffs' review of body camera of approximately five separate search warrant executions shows RPD SEU officers knocking while simultaneously entering residences.

Noell P. Tin

° Shirley L. Fulton

*Nancy E. Walker

C. Melissa Owen

John W. Gresham

F. Lane Williamson

William G. Simpson, Jr.

S. Luke Largess

Sam McGee

Matthew G. Pruden

Jim Melo

Courtney H. Smith

Emily D. Gladden

Abraham Rubert-Schewel

*Of Counsel

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RPD Data and Reports

- All Incident Reports (required under DOI 1110-08 to be filled out after every search) related to searches of residences between January 1, 2020 and January 1, 2021.
- All Use of Force Reports (or reports documenting the use of force by an RPD officer, *see* DOI 1108) related to searches of residences between January 1, 2020 and January 1, 2021.²
- All Complaint of Injury Reports (DOI 1108-01) related to searches of residences between January 1, 2020 and January 1, 2021.
- All Employee Accident/Exposure Injury Reports (DOI 1106-08 attachment D) or any other report documenting RPD officer injuries related to searches of residences between January 1, 2020 and January 1, 2021.
- Body Worn Camera footage of all incidents involving use of force or an injury to an officer or citizen, related to searches of residences, between January 1, 2020 and January 1, 2021.

We look forward to your response to this letter and are happy to discuss these issues in greater detail on a call if preferable.

Respectfully,



² *See* 1108-08, a Use of Force Report is required to be completed “when a firearm is discharged or pointed at a suspect.”

TIN FULTON WALKER & OWEN

Dottie Kibbler
Raleigh Deputy City Attorney
dorothy.kibbler@raleighnc.gov
SERVED VIA EMAIL

April 20, 2022

Re: *Irving, et al v. City of Raleigh, et al*, 22-CV-0068, Reply to City Email Related to Potential Mediation

Dottie,

Thank you for your email of April 19, 2022. On April 5, 2022, Plaintiffs provided the City of Raleigh (the “City”) with a letter¹ stating that in addition to monetary compensation, Plaintiffs were eager to see changes made to the Raleigh Police Department’s (“RPD”) policies related to execution of search warrants. Plaintiffs sought RPD policies and documents 60 days in advance of any mediation “to allow for a more transparent review of RPD’s search warrant policies.”

In your email of April 19, you state that the proposed mediation would only seek to resolve Plaintiffs’ damages. We have discussed the City’s stance towards mediation with our clients, and Plaintiffs are not interested in proceeding with an early mediation that will not resolve their concerns related to RPD’s warrant execution policies. Plaintiffs are willing to discuss the City’s concerns about extensive pre-answer discovery, but will not engage in early mediation without the possibility of change to the City’s warrant execution policies.

We are happy to continue this discussion with Defendants in an effort to resolve this matter in a mutually beneficial way to all parties.

Respectfully,



Emily Gladden
Micheal Littlejohn
Elizabeth Simpson
Ian Mance
Counsel for all Plaintiffs

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° Shirley L. Fulton
*Nancy E. Walker
C. Melissa Owen
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¹ The April 5, 2022, letter was titled “Potential Mediation and Request for Documents.”